

BURKITTSVILLE MAYOR AND COUNCIL
ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND REENACT ARTICLE IX OF THE CODE OF THE TOWN OF BURKITTSVILLE, MARYLAND, FOR THE PURPOSE OF AMENDMENT TO SECTION 9.0 "HISTORIC VILLAGE (HV) DISTRICT" TO INCLUDE THE ADDITION OF S.9.4 "DEMOLITION BY NEGLECT".

SECTION 1. BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF BURKITTSVILLE THAT ARTICLE IX, SECTION 9.0 OF THE CODE OF THE TOWN OF BURKITTSVILLE, MARYLAND BE AND THE SAME IS HEREBY REPEALED.

SECTION 2. BE IT FURTHER ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF BURKITTSVILLE, MARYLAND THAT REVISIONS TO ARTICLE IX, SECTION 9.0 OF THE CODE OF THE TOWN OF BURKITTSVILLE, MARYLAND ENTITLED "HISTORIC VILLAGE (HV) DISTRICT" BE ENACTED AND MADE A PART OF ARTICLE IX, SECTION 9.4 OF THE CODE OF THE TOWN OF BURKITTSVILLE TO READ AS HEREINAFTER SET FORTH.

9.4 DEMOLITION BY NEGLECT

A) Authority

The Mayor and Council of the Town of Burkittsville and the Burkittsville Planning and Zoning Commission derive authority for this ordinance by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning, Article 66B, Section 8.01-8.17, Annotated Code of Maryland, as amended.

B) Purpose

1. The preservation of landmarks, sites, structures and districts of historical, archeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in both the Agricultural and Historical Village Districts of the Town of Burkittsville.

2. It is the further purpose of this article to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of the Town of Burkittsville by preserving sites or structures within our districts which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values of such sites, structure or districts; to foster civic beauty; to ensure public safety; and to promote the preservation and

appreciation of such sites, structures, and districts for the education and welfare of the residents of the Town of Burkittsville.

3. In order to promote the preservation of the Historic Village and Agricultural Districts, owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur. The exterior features of any landmark, site or structure located within the districts shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against the decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the Town repair such exterior features if they are found to be deteriorating.

C) Definitions

For the purposes of the Ordinance the following words and phrases, shall have the meanings respectively ascribed to them

1. "Appurtenances and Environmental Settings": Shall mean all that space of grounds and structures thereon which surrounds a designated Site or Structure and to which it relates physically or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, pastures, croplands, waterways, open space, setbacks, parks, public spaces, and rocks.
2. "Certificate of Appropriateness": Shall mean a certificate issued by the Burkittsville Planning and Zoning Commission indicating its approval of plans for construction, alteration, reconstruction, moving, or demolition of an individually designated landmark, site or structure or of a site or structure within a designated preservation district.
3. "Demolition by Neglect": Shall mean any willful abandonment or lack in the maintenance and repair of an individually designated landmark, site, or structure, or a site or structure within the designated agricultural or historic village districts, not including any appurtenances and environmental settings, that does not result from an owner's financial inability to maintain and repair such landmark, site, or structure, and which results in but not limited to any of the following conditions:
 - A. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.
 - B. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.

- C. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- D. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- E. Deterioration or crumbling of exterior plasters or mortars.
- F. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- G. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint and other protective covering.
- H. Rotting, holes, and other forms of decay.
- I. Deterioration of exterior stairs, steps, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
- J. Boarded-up windows and doors prohibited; exceptions. Boarded-up windows and doors in areas in the historic district are prohibited with the following exceptions. For immediate repair and/or precautionary needs in the event of a severe weather event, not to exceed 60 days consecutively. Temporary exceptions beyond 60 days to this standard can only be authorized by a certificate of appropriateness that is approved by the Burkittsville Planning and Zoning Commission or by order of the Environmental Management Administrator/ Zoning Administrator for a specific limited time period in order to protect the structure against further deterioration pending replacement windows, doors, or storefronts. All temporary boarded-up windows which will remain for more than 60 days must be painted as specified and authorized by the certificate of appropriateness. Property owners in the districts who currently have windows or doors boarded-up must have such windows and doors replaced pursuant to a certificate of appropriateness, within six months of the effective date of the ordinance from which this section derives.

4. "Exterior Features": Shall mean the architectural style, design, and general arrangement of the exterior of an historic structure, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs, or similar items found on or related to the exterior of an historic structure.

5. "Landmark": Shall mean any designated site or structure outside the boundaries of a preservation district that is of exceptional historic, archeological, or architectural significance.
6. "Site": Shall mean the location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, architectural, archeological, or cultural significance.
7. "Structure": Shall mean a combination of material to form a construction that is stable, including but not limited to out buildings, grain storage silos or towers, water tanks and towers, bridges, paving, bulkheads, sheds, garages, smoke houses, bins, shelters, fences, and display signs visible or intended to be visible from a public way. The term "structure" shall be construed as if followed by the words, "or part thereof."

D) Investigations of Conditions of Neglect.

The Town designates the Environmental Management Administrator/Zoning Administrator to investigate petitions and make findings.

E) Petition and Action

The status of the conditions of neglect is to be documented over a period of time when evidence of disrepair or neglect begin to appear on any property by the Environmental Management Administrator/ Zoning Administrator and can be filed as record prior to officially acting on a direction by the Mayor and Council or Planning and Zoning Commission. The Mayor and Council of the Town of Burkittsville or the Burkittsville Planning and Zoning Commission may file a petition listing specific defects with the Environmental Management Administrator/ Zoning Administrator or file petition acting on behalf of a written complaint that has been initiated by any resident residing or owning property within the incorporated limits of Burkittsville, requesting that he act under the following procedures to require the correction of deterioration or making of repairs to any historic landmark or significant site or structure located within the districts so that such structure or site shall be preserved and protected in accordance with this ordinance:

1. Whenever a petition is filed with the Environmental Management Administrator/ Zoning Administrator charging that a landmark, site or structure is undergoing demolition by neglect, he, or a designated agent, shall, if his preliminary investigation discloses a basis for such charges, within 15 days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges and offering the owner the opportunity to meet in person with the Environmental Management Administrator/ Zoning Administrator not less than 21 nor more than 45 days after the serving of such complaint. The owner and/or parties in interest shall be

given the right to answer to give testimony at the place and time fixed in the complaint; the Town shall also be given notice of the hearing; and that the rule of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Environmental Management Administrator/ Zoning Administrator. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wishes to petition the Burkittsville Board of Appeals for a claim of undue economic hardship or for a claim of administrative error in judgment for filing a petition.

2. If after such notice and hearing, the Environmental Management Administrator/ Zoning Administrator determines that the structure is undergoing demolition by neglect because it is deteriorating, according to the standards of this section, the Environmental Management Administrator/ Zoning Administrator who has inspected the site in question, shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those element of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the owner and/or parties in interest wish to petition for a claim of undue economic hardship, the Environmental Management Administrator/ Zoning Administrator's order shall be stayed until after the Board of Appeals' determination.

F) Methods of Service

Complaints or orders issued by the Environmental Management Administrator/ Zoning Administrator shall be served upon the persons either personally or by registered or certified mail; but if there whereabouts of such persons are unknown and the same cannot be ascertained by the Environmental Management Administrator/ Zoning Administrator in the exercise of reasonable diligence, and the Environmental Management Administrator/ Zoning Administrator shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for tow successive weeks in a newspaper generally circulated within the town. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

G) Safeguard from Undue Economic Hardship.

1. When a claim of undue economic hardship is made owing to the effects of this ordinance, the Environmental Management Administrator/ Zoning Administrator shall notify the Board of Appeals within ten days following the hearing on the complaint. The Board of Appeals shall schedule a hearing on the claim at it earliest convenience – not to exceed 45 days from the file date of the appeal – and within the limitations of its procedures for application deadlines.

The petitioner shall present the information provided under Subsection 2 below to the Board of Appeals. The Board of Appeals may direct that additional information be furnished as the Board believes is relevant such as findings from the Burkittsville Planning and Zoning Commission or the Burkittsville Mayor and Council. The Board of Appeals shall also state which form of financial proof it deems relevant and necessary to a particular case. In the event that any of the required information is not reasonably available to the owner and/or parties in the interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.

2. When a claim of undue economic hardship is made owing to the effects of this ordinance, the owner and/or parties in interest must provide evidence during the hearing upon the claim describing the circumstances of hardship. The minimum evidence shall include for all property the following:

- a. Nature of ownership (individual, business, or nonprofit) or legal possession, custody and control.
- b. Financial resources of the owner and/or parties in interest.
- c. Cost of repairs.
- d. Assessed value of the land and improvements.
- e. Real estate taxes for the previous two years.
- f. Verification of the presence or absence of a lien against property from any agency.
- g. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
- h. Annual debt service, if any, for the previous two years.
- i. Any listing of the property for sale or rent, price asked, and offers received, if any.
- j. For income producing property:
 - a. Annual gross income from the property for the previous two years.
 - b. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed, including, but not limited to, assurance of regular maintenance and inspection intervals of the property.
 - c. Annual cash flow, if any, for the previous two years.

3. Within 30 days of the Board of Appeals hearing on the claim, the Board of Appeals shall cause to be made a finding regarding the claim of undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Board of Appeals shall report such a finding to the Environmental Management Administrator/ Zoning Administrator. The Environmental Management Administrator/ Zoning Administrator shall then cause to be issued an order for such property to be repaired within the time specified in the decision, not to exceed 270 days from

the date of issuance until the date the completed corrective action is accepted by the Environmental Management Administrator/ Zoning Administrator.

4. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under State of Maryland law, loans or grants from the Town, County, State agency, or other public, private, or non-profit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this ordinance sufficient to mitigate the undue economic hardship. The Board of Appeals shall report such finding and plan to the Environmental Management Administrator/ Zoning Administrator. The Environmental Management Administrator/ Zoning Administrator shall cause to be issued an order for such property to be repaired within the time specified, and in accordance with the provisions of the recommended plan.

H) Investigation of Conditions of Neglect.

The Town designates the Environmental Management Administrator/Zoning Administrator to investigate petitions and make findings.

I) Appeals.

1. Findings made by the Environmental Management Administrator/ Zoning Administrator or by the Planning and Zoning Commission may be appealed to the Burkittsville Board of Appeals. To perfect such an appeal, application must be filed by an aggrieved party with the Board of Appeals within ten days following receipt of the order for repair of the property or determination. Appeals from the Board of Appeals shall be in nature of certiorari.
2. When in the course of reviewing the case and corrective orders to be rendered, the Environmental Management Administrator/ Zoning Administrator shall be required to consult with a Historic Preservation Planner and/or architect or consultant to evaluate the historical significance of the deteriorating structure(s), element(s) or appurtenance(s) in question. Furthermore, the Environmental Management Administrator/ Zoning Administrator shall request an evaluation by the designated Historic Preservation Agent (hereafter "Agent") to evaluate the historical, archeological, cultural, or architectural significance of the entire property and its relationship to the deteriorating structure(s), element(s) or appurtenance(s) in question in addition to the relationship of the property with the remaining Historic District at large. The Agent shall also be consulted to provide relevant historic architectural accounts of the specific property in question that will assist the Environmental Management Administrator/ Zoning Administrator in determining the appropriateness of historic materials and/or methods of installation required as part of the

corrective action order rendered. During the course of the Agent's evaluation of the property, structure(s), element(s) and/or appurtenance(s), only the aforementioned factors shall be taken into account and no consideration will be given to the cost of materials or methods of installation necessary to undertake the proposed corrective action repairs, nor shall any consideration be given to any potential undue economic hardship professed by the property owner or party in interest. Such consultation and evaluation conducted by the Agent shall be construed as advisory only in nature, but shall be compelled to be entered into the written record of the case and with a Board of Appeals hearing case, if a hearing is requested. The Agent is not required to testify at a Board of Appeals hearing of the case, as his written evaluation report along with his list of professional qualifications shall be filed with the Environmental Management Administrator/ Zoning Administrator and entered into the public hearing record, unless a written request by registered or certified mail is made by any one of the following parties at least seven (7) days prior to the established Board of Appeals public hearing case date:

- a. The property owner or party in interest, or
- b. An agent or lawyer representing the property owner or party in interest;
- c. The Chairman of the Burkittsville Board of Appeals, or
- d. The Chairman of the Burkittsville Planning and Zoning Commission, and/or
- e. The Environmental Management Administrator/ Zoning Administrator

J) Other Town or County Powers.

1. Nothing contained within this Ordinance shall diminish the Town's or County's power to declare a building unsafe or a violation of the minimum building code.
2. Repairs.
 - a. Repairs ordered. All repairs ordered by corrective action shall comply with all Town zoning codes and the repairs are subject to approval and inspection by the Town and County vis-à-vis the requisite zoning certificate and building permit process. Additional fees for this process may also apply, although consideration may be given to forgiving all fees in conjunction with a plan to ameliorate an economic hardship for the repairs ordered when the Board of Appeals has determined an undue economic hardship exists. No provision of this ordinance or action on the part of the Town, its bodies or agents in declaring an undue economic hardship for an applicant shall relieve the applicant/property owner or parties in interest from complying with applicable and enforceable zoning and building codes even in the event that the applicant/property owner or parties in interest are relieved of their fiduciary responsibility for the

payment of fees associated with obtaining the proper certificates and permits required by law.

- b. Corrective Repair. This method shall be the action prescribed by the Environmental Management Administrator/ Zoning Administrator as the remedy for all structures determined to be undergoing demolition by neglect. Only in circumstances whereby the structure, setting or appurtenance in violation of this section that is identified as undergoing demolition by neglect is judged to be more than 80 percent structurally deficient by the Environmental Management Administrator/ Zoning Administrator and/or Town designated engineer or general contractor, and after consulting an Historic Preservation Agent, may the corrective action be granted as a demolition.

3. Inspection of Repairs

The Environmental Management Administrator/ Zoning Administrator shall periodically inspect the property following the corrective action order being rendered to ensure adequate progress is demonstrated in conducting complete repair. The Environmental Management Administrator/ Zoning Administrator shall give formal written notice of corrective order acceptance to the Mayor and Council and the property owner or parties in interest upon the satisfactory completion of the ordered action to mitigate the demolition by neglect.

4. Willful Demolition

Nothing in this ordinance shall prohibit any property owner from undertaking a willful demolition of any structure, appurtenance or environmental setting prior to the Town or The Environmental Management Administrator/ Zoning Administrator issuing a corrective action order or citation. Once an action order has been issued, the corrective action plan as agreed to between the Town and property owner or parties in interest shall be binding. All willful demolitions must comply with all applicable Town zoning ordinances and County building codes.

Hold harmless Proviso

The Mayor and Council of the Town of Burkittsville, its designated or appointed agents, employees, contracted agents and associated public bodies shall not be held liable for any financial, physical, structural, environmental, health or safety related complications or adverse impacts that may arise from the property owner or interested party being compelled to take or not undertake corrective action and repair or demolition of the affected property, structure, appurtenance or environmental setting.

K) Penalties and Remedies.

Enforcement of this Ordinance may be by either one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions:

1. Equitable remedy. The Town may apply for any appropriate equitable remedy to enforce the provisions of this article.
2. Order of abatement. The Town may apply for and the Court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. Whenever the party is cited for contempt by the Court and the Town executes the order of abatement, the Town shall have a lien, on the property for the cost of executing the order of abatement.
3. Civil penalty. No civil penalty shall be levied unless and until the Environmental Management Administrator/ Zoning Administrator (or designated agent) shall deliver a written notice by personal service or by registered or certified mail, return receipt requested, to the person responsible for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of any appeal by the Board of Appeals, and no corrective action has been completed, a civil penalty shall be assessed in the amount of \$50.00 per day of the continuing violation. Such a fine shall be collected upon correction of the violation and completion of the initial corrective action ordered in full, irrespective of whether the property owner in violation had been granted means to relieve a determined undue economic hardship. In the event that the fines in full have not been paid to the Mayor and Council after reasonable notice by the aforementioned means of notification has been given, the Mayor and Council may direct the Environmental Management Administrator/ Zoning Administrator to withhold any or all zoning certificates, certificates of appropriateness, building permits or final certificate of use and occupancy until such time when payment of fine has been received. Should these actions fail to elicit the payment in full of the levied fines, or some partial payment or installment plan as agreed upon by the Mayor and Council within thirty (30) days of second notice, the Mayor and Council shall then direct the Town Clerk and/or Town Treasurer to file a tax lien with the State Department of Taxation and Assessments and County Tax Assessment Office for the full accumulated amount of the fines.
4. The fine collected by the Town will be allocated to Town public works, public facility or park improvements or historic preservation projects, and/or

allocated to defray the accrued costs of employed and contracted staff costs directly attributed to the conduct, investigation, mediation and appeals of the particular case, but shall not be allocated to other accounts within the Town's General Fund. Furthermore, penalties shall be enforced as outlined in this section should any corrective action not be completed by the property owner or parties in interest and accepted by the Environmental Management Administrator/ Zoning Administrator within 270 days from the issuance of the order or from the date of a Board of Appeals decision being entered if the case is appealed.

5. Emergency provisions for abatement. In the event that a structure, appurtenance or associated architectural or environmental setting/ feature has become an imminent danger, hazard or has caused circumstances that would otherwise pose threat to the health or safety of the public, the Environmental Management Administrator/ Zoning Administrator, with the concurrence of the majority of the Burkittsville Mayor and Council may issue and order of abatement to compel the property owner or party in interest to remove or demolish the features that cause a public health or safety hazard. The process for enacting such emergency provisions shall be enacted by ordinance by the Mayor and Council of Burkittsville from time to time.

SECTION 3. AND BE IT FURTHER ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF BURKITTSVILLE, MARYLAND THAT THE PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON THEIR PASSAGE AND APPROVAL.

BURKITTSVILLE MAYOR AND COUNCIL ORDINANCE NO. _____

RECOMMENDED BY THE PLANNING & ZONING COMMISSION
ON THIS _____ DAY OF _____, 2010

INTRODUCED THIS _____ DAY OF _____, 2010

PASSED THIS _____ DAY OF _____, 2011

WITH: ___ IN FAVOR, ___ OPPOSED, ___ ABSTAINING, ___ ABSENT.

APPROVED THIS _____ DAY OF _____, 2011

BY: _____

Deborah Burgoyne, Mayor

ATTEST: _____

Michelle Beller, Town Clerk

Approved this day for legal sufficiency: _____, 2011

By: _____